

In the Matters of License No. 94008 and Merchant Mariner's
Document No. Z-521891
Issued to: CARLTON H. FARRELL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

752
(REMANDED APPEAL NO. 714)

CARLTON H. FARRELL

Pursuant to my order of 30 November, 1953, which remanded this case for further proceedings, the hearing was reopened on 28 December, 1953, at New York, New York.

The hearing was limited to the original charge of negligence based upon a specification alleging in substance what while serving as Night Engineer on board the American SS QUEMADO LAKE under authority of the license above described, on or about 22 February, 1953, while said vessel was at Bethlehem Steel Shipyard, Brooklyn, New York, Appellant neglected to maintain a proper water level in the port boiler and this caused severe damage to the boiler.

After the hearing was reopened, the only additional evidence submitted was several documents and testimony in the nature of expert opinion. There is no testimony in the Record by Appellant nor by the oiler or fireman who were on watch with Appellant at the time the boiler was damaged on 22 February, 1953.

At the conclusion of the hearing, the Examiner concluded that the Charge and specification had been proved and he entered an order suspending Appellant's License No. 64008 for a period of six months. The Examiner held that the low water condition caused the tubes to rupture because there was no water in them.

Because of the disposition to be made of this case, it is not necessary to discuss all the points raised by Appellant in his appeal. Among other contentions, Appellant claims that the damage to the boiler was not caused by a low water condition in the boiler but by an excessive accumulation of soot, on the superheater and air heater tubes, which caused the tubes to rupture while they still contained water; and that no additional evidence of a factual nature was presented by the Investigating Officer at the reopened hearing after remand by the commandant "looking to a full discovery of the facts attending this incident" (Appeal No. 714).

My original decision in this case stated that the Record was not sufficiently developed for me to safely make "Findings of Fact" as required by law. As pointed out by Appellant, this deficiency has not been remedied. The testimony of the oiler and fireman on watch should have been obtained by their appearance at the hearing

or by deposition. Neither of the opposing theories of the Examiner and Appellant, as to the initial cause of the damage, is supported by evidence as to the actual facts related to the incident in question. Appellant's expert witness testified that he thought it was impossible for any person to determine whether the water in the boiler was lost first or the soot fire was started first.

In the absence of substantial and probative evidence to support the charge, the order of suspension must be reversed.

ORDER

The order of the Examiner dated at New York, New York, on 18 February, 1954, is VACATED, SET ASIDE and REVERSED. The charge and specification against the Appellant are hereby DISMISSED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 21st day of June, 1954.